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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,479	12/05/2003	Frank A. Walton	CZDOS.00002	9497

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EXAMINER
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KIM, YOON YOUNG

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/728,479

Applicant(s)

WALTON ET AL.

Examiner

Yoon-Young Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

This Office Action is in response to the remarks filed on June 8, 2005.

### ***Claim Analysis***

1. Regarding Claim 18, it is unclear whether the relationship between the lower filter coupler gasket and the filter element assembly or the filter housing assembly is being claimed. For examination purposes the filter housing assembly has been deemed proper.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-2, 6, 9, 13-14, and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over DePolo et al., U.S. Patent No. 4,652,369 in view of Mendelow, U.S. Patent No. 3,513,981.

Regarding Claim 1, DePolo discloses a backwash, flushing filter assembly (Fig. 1, #10) comprising: a header assembly (#22) wherein the header assembly includes a cylinder cap, a cylinder base with threaded connector means (Fig. 2, #52) disposed within the interior circumference of the cylinder base, a fluid inlet connect (#20) and a filtered fluid outlet connect (Fig. 1, #58); a filter element assembly which is releasably connected to the rotatable valve assembly wherein the filter element assembly includes, a filter stalk (Fig. 2, #44) with filter ports (#45) formed in the filter stalk, and a filter media (#51) disposed around the exterior of the filter stalk; and a filter housing assembly (#24) which is releasably connected to the header assembly wherein the filter housing assembly includes a filter housing (#26) and a backwash drain port (#34). DePolo discloses a rotatable valve assembly (Col. 1, Lines 64-68) but does not describe all its elements. Mendelow teaches a rotatable valve assembly (Fig. 8, #14, 19) which is slidably connected to the header assembly (#11) wherein the rotatable valve assembly includes an interior chamber with a backwash fluid inlet port (#17), a filtered fluid outlet port (#24), and at least one seal gasket (#20). It would have been obvious to one of ordinary skill in the art to modify DePolo by adding the element of Mendelow in order to be able to select different filter functions with a multiport valve that is easy to operate, free from leaks, durable inexpensive, and accounts for very low pressure drop (Col. 3, Lines 38-45).

Regarding Claim 2, DePolo discloses that the header assembly and filter housing assemblies are detachably connected via threaded connects (#52, 36).

Regarding Claim 6, DePolo discloses a lower filter coupler (#48).

Regarding Claim 9, DePolo discloses that the lower end of the filter stalk is releasably connected to the lower filter coupler (Col. 3, Lines 66-68).

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Regarding Claim 13-14, DePolo does not disclose the shape of the stalk ports. It would have been obvious to one of ordinary skill in the art to make the shape of the ports dependant on the material being filtered.

Regarding Claim 16, DePolo discloses a method for backwashing an inline filter assembly comprising the steps of: providing the filter assembly; directing a fluid into the filter assembly; filtering the fluid through a filter media disposed on the exterior surface of a filter stalk; turning the rotatable valve assembly which results in the reversal of fluid flow through the filter stalk; removing the debris on the filter media and at the bottom of the filter housing assembly via the backwash drain port (Col. 3, Lines 41-56).

4. Claims 3 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over DePolo in view of Mendelow as applied to Claim 1 above, and further in view of Morris, U.S. Patent No. 5,057,214.

Regarding Claims 3 and 15, DePolo in view of Mendelow does not disclose a clip. Morris teaches valve for a backwash fluid filtration system including a clip (Fig. 2, #28). It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Morris because it is a means of securing that is common in the filter art.

5. Claims 4-5, 17, and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over DePolo in view of Mendelow as applied to Claim 1 above, and further in view of Chandler et al., U.S. Patent No. 4,515,692.

Regarding Claim 4, DePolo discloses a turn knob (Fig. 1) but does not disclose a turn guide slot. Chandler teaches a turn knob (Fig. 1, #45) and a turn guide slot (#46, 47) formed on the exterior of the rotatable valve assembly (#4). It would have been obvious to one of ordinary

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skill in the art to modify DePolo in view of Mendelow by adding the element of Chandler in order to limit the arcuate movement of the knob (Col. 5, Lines 39-41).

Regarding Claim 5, DePolo in view of Mendelow does not disclose a top filter coupler. Chandler teaches a rotatable valve assembly including a top filter coupler (Fig. 5, #49). It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Chandler in order to slidably receive and frictionally engage the filter stalk (Col. 5, Lines 48-52).

Regarding Claim 17, DePolo in view of Mendelow does not disclose turning the rotatable valve assembly by one-quarter. Chandler teaches that the backwash operation is accomplished by a one-quarter turn of the rotatable valve assembly (Col. 6, Lines 62-66). It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Chandler in order to change the porting of the water filter unit (Col. 6, Lines 66-68).

Regarding Claim 19, DePolo in view of Mendelow does not disclose turning the rotatable valve assembly by one-quarter. Chandler teaches that the backwash operation is terminated by turning the rotatable valve assembly by an opposite one-quarter turn resulting in the resumption of filter operation (Col. 7, Lines 43-46). It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Chandler in order to prepare the filter for normal use (Col. 7, Lines 46-47).

6. Claims 10-12 rejected under 35 U.S.C. 103(a) as being unpatentable over DePolo in view of Mendelow as applied to Claim 1 above, and further in view of Roussel, U.S. Patent No. 5,118,418.

Regarding Claim 10-12, DePolo in view of Mendelow does not disclose a gasket stem, gasket seal, or a gasket cap. Roussel teaches a gasket seal (Fig. 2, #17) placed around the

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gasket stem (#18) and detachably secured thereto by a gasket cap (Fig. 4, #19). It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Roussel in order to provide a snug fit of the gasket seal (Col. 3, Lines 20-24). It would also have been obvious to connect the gasket stem and the gasket cap by threaded means because it is a method of securing that is common in the filter art

7. Claims 7-8, and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over DePolo in view of Mendelow as applied to Claim 1 above, and further in view of Brett, U.S. Patent No. 3,834,537.

Regarding Claim 7, DePolo in view of Mendelow does not disclose locking pins. Brett teaches a rotatable valve assembly (Fig. 3, S) including locking pins (Fig. 4, #89, 98). It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Brett in order to be able to rotate the filter stalk (Col. 6, Lines 40-50).

Regarding Claim 8, DePolo in view of Mendelow does not disclose locking tabs. Brett teaches a rotatable valve assembly (Fig. 3, S) including locking tabs (Fig. 8, #94). It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Brett in order to be able to rotate the filter stalk (Col. 7, Lines 10-19).

Regarding Claim 18, DePolo discloses that the collected solids are removed via the backwash drain filter port during the backwash operation (Col. 3, Lines 51-56) but does not disclose the filter element assembly being separated from the lower filter coupler gasket. Brett teaches a seal (Fig. 12, #104) being separated from contact with a filter element. It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Brett in order to assist in sealing and respond to water flow (Col. 8, Lines 15-28).

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8. Claim 20-26 rejected under 35 U.S.C. 103(a) as being unpatentable over DePolo in view of Morris, Mendelow, and Chandler.

Regarding Claim 20, DePolo discloses a backwash, flushing filter assembly (Fig. 1, #10) comprising: a header assembly (#22) wherein the header assembly includes a cylinder cap, a cylinder base with threaded connector means (Fig. 2, #52) disposed within the interior circumference of the cylinder base, a fluid inlet connect (#20), a filtered fluid outlet connect (#58); a filter element assembly which is releasably connected to the rotatable valve assembly wherein the filter element assembly includes a lower filter coupler (#48), a filter stalk (Fig. 2, #44) with filter ports (#45) formed in the filter stalk, and a filter media (#51) disposed around the exterior of the filter stalk; and a filter housing assembly (#24) which is releasably connected to the header assembly wherein the filter housing assembly includes a filter housing (#26) and a backwash drain port (#34). DePolo does not disclose a set clip. Morris teaches valve for a backwash fluid filtration system including a clip (Fig. 2, #28). It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Morris because it is a means of securing that is common in the filter art.

Mendelow discloses a rotatable valve assembly (Fig. 8, #14, 19) which is slidably connected to the header assembly (#11) wherein the rotatable valve assembly includes an interior chamber with a backwash fluid inlet port (#17), a filtered fluid outlet port (#24). Mendelow does not disclose a top filter coupler or a turn guide slot. Chandler teaches a rotatable valve assembly including a top filter coupler (Fig. 5, #49) and a turn guide slot (#46, 47). It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Mendelow by adding the element of Chandler in order to slidably receive and frictionally engage the filter stalk (Col. 5, Lines 48-52) and limit the arcuate movement of the knob (Col. 5, Lines 39-41).



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DePolo in view of Morris does not disclose a rotatable valve assembly. It would have been obvious to one of ordinary skill in the art to modify DePolo in view of Morris by adding the element of Mendelow in view of Chandler in order to be able to select different filter functions with a multiport valve that is easy to operate, free from leaks, durable inexpensive, and accounts for very low pressure drop (Col. 3, Lines 38-45).

Regarding Claim 21, Chandler discloses that the rotatable valve (Fig. 2, #4) is secured to the filter stalk (#17) within the filter housing (#2) but does not disclose a clip. Morris teaches a clip (Fig. 2, #28) inserted through a slot (#22) in the cap (#14). It would have been obvious to one of ordinary skill in the art to modify Chandler by adding the element of Morris because it is a means of securing that is common in the filter art.

Regarding Claim 22, Chandler discloses that the rotation of the rotatable valve assembly results in the axial movement of the rotatable valve assembly and filter element assembly (Col. 5, Lines 34-52).

Regarding Claim 23-24, DePolo discloses that the rotation of the rotatable valve assembly reverses the direction of fluid flow through the filter assembly and flushes the collected solids from the bottom of the filter housing assembly (Col. 3, Lines 15-56).

Regarding Claim 25, DePolo discloses a lower filter coupler but does not disclose slots. Chandler discloses preformed slots to assist in the capture of accumulated solids (Fig. 2, #18). It would have been obvious to one of ordinary skill in the art to modify DePolo by adding the element of Chandler in order to keep the opening clear (Col. 6, Lines 51-54).

Regarding Claim 26, DePolo discloses that the lower filter coupler is removably connected to the filter stalk (Col. 3, Lines 66-68).

9. Claims 27-30 rejected under 35 U.S.C. 103(a) as being unpatentable over Morris.

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Regarding Claim 27, Morris discloses a clip (#28) and a header assembly (#10) assembled to a filter media (#12). Morris does not disclose that the header assembly is attached to the filter by a clip but it would have been obvious to join the elements by such means because it is a removable method of securing that is common in the filter art. Although he does not disclose a filter assembly it would have been obvious to one of ordinary skill in the art that a replaceable granular activated carbon bed filter (Col. 2, Lines 19-24) would need to be inside a filter assembly.

Regarding Claim 28-30, Morris discloses that the replacement of the filter is accomplished without detaching the influent pipe, effluent pipe, or backwash drain pipe (Col. 2, Lines 24-32).

10. Claim 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Morris in view of Roussel.

Morris does not disclose a filter stalk. Roussel teaches a filter media which includes the filter stalk (Fig. 4, #48). It would have been obvious to one of ordinary skill in the art to modify Morris by adding the element of Roussel in order to direct fluid flow (Col. 3, Lines 50-53, 63-68).

### ***Response to Arguments***

11. Applicant's arguments filed on June 8, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument regarding Claims 1-2, 6, 9, and 13-14 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., backwash drain port located at the bottom of the filter housing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the

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specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the rotatable valve assembly of Mendelow is not properly combinable with the DePolo filter assembly, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument regarding Claim 2, the threaded connects (#52, 36) of DePolo are fittings (Col. 3, Lines 11-14) which are threaded as shown in Figure 2.

In response to applicant's argument regarding Claim 16, DePolo teaches removing the debris on the filter media (#51) and at the bottom of the filter housing assembly (#24) via the backwash drain port (#34) as disclosed in Column 3, Lines 47-56.

In response to applicant's argument that the clip element of Morris does not have the same function as the claimed invention, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant's argument that it would not have been obvious to combine the teachings of Chandler with DePolo in view of Mendelow, the test for obviousness is not whether

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the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that it would not be obvious to combine the gasket seal of Roussel with the teachings of DePolo in view of Mendelow, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that the references are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the references are in the field of applicant's endeavor.

In response to applicant's argument, Brett, Chandler, DePolo, Mendelow, Morris, and Roussel are analogous art and therefore are combinable.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yoon-Young Kim whose telephone number is (571) 272-2240. The examiner can normally be reached on 8:30-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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